



Atty. Dkt. No.: 071949-1307

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Kenneth F. Buechler
Title: DIAGNOSTIC DEVICES AND
APPARATUS FOR THE
CONTROLLED MOVEMENT
OF REAGENTS WITHOUT
MEMBRANES

Appl. No.: 09/613,650

Filing Date: July 11, 2000

Examiner: Alexander, Lyle

Art Unit: 1743

<p>CERTIFICATE OF MAILING</p> <p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope address to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date below.</p> <p><u>Vanessa E. Agha</u> (Printed Name)</p> <p><u>Vanessa E. Agha</u> (Signature)</p> <p><u>June 15, 2006</u> (Date of Deposit)</p>

**PETITION UNDER 37 CFR §§ 1.181 OR 1.182 TO ACCEPT A FILING AS OF IT'S
DATE OF FACSIMILE TRANSMISSION IN ACCORDANCE WITH 37 CFR §1.8**

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

Responsive to the Non-Final Office Action, mailed February 7, 2006, attached herewith is a copy of a response in compliance with 37 CFR 1.111 previously filed with the USPTO by facsimile transmission on May 8, 2006.

The facsimile transmission of May 8, 2006 has met the requirements of 37 CFR § 1.8(a)(1)(i)(B) because it qualifies as a suitable document for facsimile transmission in accordance with 37 CFR § 1.6(d), and includes a certificate for each piece of correspondence stating the date of deposit or transmission. Such certificate is titled "Certificate of Facsimile Transmission" and is found at the upper right of page 1 of the Transmittal and page 1 of the

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01 FC:2252 225.00 DA

DLMR_284894.1

07/24/2006 CKHLOK 00000003 500872 09613650
01 FC:2252 225.00 DA

Response as filed. The Certificate is signed by Vanessa Agha, Assistant to the undersigned attorney.

The undersigned states that this facsimile transmission was made on the date indicated. Applicants became aware that the transmission was apparently lost following receipt by the USPTO by checking the status of the filing in the Public Pair system. Also attached is a copy of the sending unit's report confirming facsimile transmission on May 8, 2006. As such, the facsimile transmission return receipt constitutes *prima facie* evidence that the alleged response was in fact previously received by the USPTO on the date indicated.

Applicants have complied with 37 CFR §1.8(b) to have the missing correspondence considered to be timely filed by informing the USPTO promptly of the missing transmission and by providing (herewith) an additional copy of the previously transmitted correspondence and certificate, and by including a copy (herewith) of the sending unit's report confirming transmission may be used to support this statement.

Applicant submits that no fee is due for this Response to Office action or for filing this Petition because the response was lost by the USPTO following receipt. However, should a fee be due, such fee may be charged to Deposit Account No. 50-0872. Applicants also request that there be no loss of patent term extension resulting from any delay that incurred after May 8, 2006 because any such loss of time is the fault of the USPTO.

In re application of
Kenneth F. Buechler
Application No.: 09/613,650
Page 3 of 3

Atty. Dkt. No.: 071949-1307

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 50-0872. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 50-0872.

Respectfully submitted,

Date June 15, 2006

FOLEY & LARDNER, LLP
Customer Number: 30542
Telephone: (858) 847-6722
Facsimile: (858) 792-6773

By Barry S. Wilson

Richard Warburg, Reg. No. 32,327
By Barry S. Wilson, Reg. No. 39,431
Attorney for Applicant

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Appl. No.: 09/613,650
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Examiner: Alexander, Lyle
Art Unit: 1743

CERTIFICATE OF FACSIMILE TRANSMISSION I hereby certify that this paper is being facsimile transmitted to the United States Patent and Trademark Office, Alexandria, Virginia on the date below. Vanessa E. Agha (Printed Name) <i>Vanessa E. Agha</i> (Signature) August 2, 2006 (Date of Deposit)
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REQUEST FOR RECONSIDERATION OF A DECISION ON PETITION

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Attention: Office of Petitions:

Sir:

Applicant hereby petitions the Commissioner for reconsideration of the decision dated July 24, 2006, denying a petition under 37 CFR §§ 1.181 OR 1.182 to accept a filing as of it's date of facsimile transmission in accordance with 37 CFR §1.8.

The decision denying the petition is based on the absence of a receipt evidencing successful facsimile transmission on the date alleged. See Decision on Petition, paragraph bridging pages 2 and 3. A check of the documents in public pair show that no such facsimile transmission receipt is in the file history.

However, Applicants filed a copy of a facsimile transmission receipt with the Petition as evidenced by a date stamped return postcard, copy attached as Exhibit A. Applicants hereby attach a copy as Exhibit B of the facsimile transmission receipt for reconsideration. As discussed

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In re application of
Kenneth F. Buechler
Application No.: 09/613,650
Page 2 of 2

Atty. Dkt. No.: 071848-1307

in the initial petition, the facsimile transmission of May 8, 2006 has met the requirements of 37 CFR § 1.8(a)(1)(i)(B) because it qualifies as a suitable document for facsimile transmission in accordance with 37 CFR § 1.6(d), and includes a certificate for each piece of correspondence stating the date of deposit or transmission.

Applicant submits that no fee is due for this Response to Office action or for filing this Petition because the response was lost by the USPTO following receipt. Upon the granting of this Petition, Applicants request that the Office refund the charge for the two months of extension and credit any loss of patent term extension resulting from any delay that incurred after May 8, 2006.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 50-0872. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 50-0872.

Respectfully submitted,

Date August 2, 2006

FOLEY & LARDNER, LLP
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By Barry Wilson

Richard Warburg, Reg. No. 32,327
By Barry S. Wilson, Reg. No. 39,431
Attorney for Applicant

DLMR_288495.1

UNITED STATES PATENT & TRADEMARK OFFICE
Washington, D.C. 20231

REQUEST FOR PATENT FEE REFUND												
1 Date of Request: 06/15/07		2 Serial/Patent # 09/613,650										
3 Please refund the following fee(s):		4 PAPER NUMBER	5 DATE FILED	6 AMOUNT								
	Filing			\$								
	Amendment			\$								
X	Extension of Time	IFW	06/19/06	\$ 225.00								
	Notice of Appeal/Appeal			\$								
	Petition			\$								
	Issue			\$								
	Cert of Correction/Terminal Disc.			\$								
	Maintenance			\$								
	Assignment			\$								
	Other			\$								
		7 TOTAL AMOUNT OF REFUND		\$ 225.00								
		8 TO BE REFUNDED BY:										
10 REASON:		Treasury Check										
	Overpayment	X	Credit Deposit A/C #:									
	Duplicate Payment		9 <table border="1" style="display: inline-table; border-collapse: collapse; text-align: center;"> <tr> <td style="width: 20px;">5</td> <td style="width: 20px;">0</td> <td style="width: 20px;">--</td> <td style="width: 20px;">0</td> <td style="width: 20px;">8</td> <td style="width: 20px;">7</td> <td style="width: 20px;">2</td> </tr> </table>			5	0	--	0	8	7	2
5	0	--	0	8	7	2						
X	No Fee Due (Explanation):											
It was established on renewed petition that a response was timely filed and thus, no extension of time was necessary												
11 REFUND REQUESTED BY:												
TYPED/PRINTED NAME: Nancy Johnson		TITLE: Sr. Petitions Attorney										
SIGNATURE:		PHONE: 571-272-3219										
OFFICE: Office of Petitions												
***** THIS SPACE RESERVED FOR FINANCE USE ONLY: *****												
APPROVED: _____			DATE: _____									

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